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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S  
RULING NO. MC96-3/21

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

Special Services Fees and Classifications

Docket No. MC96-3

PRESIDING OFFICER'S RULING ON  
OCA MOTION TO COMPEL

(October 18, 1996)

The Office of the Consumer Advocate (OCA) submitted interrogatories OCA/USPS-76-87 on September 18, 1996. The Postal Service objected to parts 77(d) and (e), and 84(d) of that set.<sup>1</sup> On October 3, 1996, the OCA filed a motion to compel responses to those parts.<sup>2</sup> The Postal Service filed its opposition to the OCA's motion on October 10, 1996.<sup>3</sup>

These interrogatory parts address the general issue of how IOCS sampling is affected by changes in the composition of CAG strata over time.

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<sup>1</sup> Objection of the United States Postal Service to Office of the Consumer Advocate Interrogatories OCA/USPS-77(d) and (e), and 84(d), September 30, 1996 ("Objection").

<sup>2</sup> Office of the Consumer Advocate Motion to Compel Responses to Interrogatories OCA/USPS-77 (Parts d and e) and 84 (part d), October 3, 1996 ("Motion").

<sup>3</sup> Opposition of the United States Postal Service to Office of the Consumer Advocate Motion to Compel Responses to Interrogatories OCA/USPS-77 (Parts d and e) and 84 (Part d), October 10, 1996 ("Opposition").

The Postal Service argues that these interrogatories are procedurally inappropriate, since they were submitted after the normal period for discovery against the Postal Service's case. While Special Rule 2.E. extends the discovery period until 20 days before final rebuttal testimony is due for information that is available only from the Postal Service, the Postal Service argues that the rule does not authorize these interrogatories. It maintains that Special Rule 2.E. is intended to apply only to information that a party needs in order to prepare rebuttal evidence, and that the time for the OCA to submit testimony rebutting the Postal Service's case is past. Opposition at 3-9.

The OCA argues that Special Rule 2.E. is not limited to information that is needed to support rebuttal testimony, but applies to information that can become evidence by any route, including designation of institutional responses into the record. Motion at 3. The OCA implies that such an interpretation of Special Rule 2.E. is needed to allow it to carry out its mandated function of identifying and attempting to fill informational gaps in the record, and of identifying inaccuracies or fallacies in information submitted by others for the record. Motion at 2.

While these are key responsibilities of the OCA, they are to be carried out "using the means and procedures available to parties before the Commission." 39 CFR 3002, Appendix A. Rule 2.E. was generally intended to extend the otherwise applicable discovery period for information that can be obtained only from the Postal Service that is needed to prepare rebuttal testimony.

Presiding Officer's Ruling R87-1/3 at 2. Because no participant filed rebuttal testimony on the topic that these interrogatories address, rebuttal evidence on this topic will not be appropriate, and Special Rule 2.E. does not apply to these interrogatories. Accordingly, the OCA's Motion will be denied.

With respect to OCA/USPS-84(d), the OCA plausibly asserts that the need to submit this interrogatory arises from the Postal Service's failure thus far to directly answer OCA/USPS-54(e), which asked the Postal Service to identify offices below CAG B that had no chance of selection in the FY 1995 IOCS sample.<sup>4</sup> In its Opposition, at 2, the Postal Service asserts that it would not be able to answer OCA/USPS-84(d) for the same reasons that it is unable to answer OCA/USPS-54(e).<sup>5</sup>

From its initial and supplemental responses to OCA/USPS-54(e), it appears that the Postal Service has not met its obligation to fully respond to that interrogatory. The Postal Service is able to identify offices in CAGs A and B in FY 1995

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<sup>4</sup> OCA/USPS-84(d) asks for this information for years prior to FY 1995.

<sup>5</sup> In its Objection, the Postal Service states that it is "currently investigating how it might comply" with Presiding Officer's Ruling MC96-3/16 as it applies to OCA/USPS 54(e), and that it "may be extremely difficult to answer." Objection at 3, n.2. In the Postal Service's supplemental response of October 7, 1996, to OCA/USPS-54(e), the Postal says that it cannot locate the original IOCS sample frame, and therefore cannot identify which offices in the FY 1995 IOCS sample frame were not in the original sample frame. It also mentions split finance numbers as an obstacle to identifying such offices. Response of United States Postal Service to Interrogatories of the Office of the Consumer Advocate [OCA/USPS-54(c) and (e) and 56(c)], October 7, 1996.

that had no chance of selection in that year's IOCS sample. See the Postal Service's response of September 6, 1996, to OCA/USPS-54(c). It is therefore not clear why the Postal Service is unable to identify offices in the remaining CAGs in FY 1995 that had no chance of selection in that year. The Postal Service apparently has records that allow it to track which offices advance to, or retreat from, a given CAG in a given year, because it adjusts its cost weighting factors accordingly. Id. It is reasonable to expect that there also are records that would allow identification of some (if not all) offices in existence in FY 1995 that were not in existence when the original IOCS sample frame was drawn, and therefore had no chance of being selected in the FY 1995 IOCS sample.

How representative the FY 1995 IOCS sample is, and therefore, how reliable the FY 1995 IOCS is, depends, in part, on how many offices in each CAG in FY 1995 had no chance of selection in the FY 1995 IOCS sample. OCA/USPS-54(e) seeks this information. The Postal Service response to that interrogatory remains inadequate. While it is not procedurally appropriate to require the Postal Service to respond to OCA/USPS-84(d), it is procedurally appropriate to require the Postal Service to supplement its response to OCA/USPS-54(e). Accordingly, even if the Postal Service cannot make a direct comparison between the original IOCS sample frame and the sample frame in FY 1995, it is directed to supplement its answer to OCA/USPS-54(e) with as much information as it can reasonably obtain through accounting records or other means.

## RULING

1. The Office of the Consumer Advocate Motion to Compel Responses to Interrogatories OCA/USPS-77 (Parts d and e) and 84(Part d), filed October 3, 1996, is denied.

2. The Postal Service is directed to supplement its response to OCA/USPS-54(e), as described in the body of this ruling, by October 28, 1996.

A handwritten signature in black ink, reading "H. Edward Quick, Jr." with a stylized flourish at the end.

H. Edward Quick, Jr.  
Presiding Officer